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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,063	01/26/2006	Henry Buse	Q9.2726	2042
23373 7590 09/02/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER				
CHEUNG, CHUN HOI				
ART UNIT		PAPER NUMBER		
3728				
MAIL DATE		DELIVERY MODE		
09/02/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/595,063

Applicant(s)

BUSE, HENRY

Examiner

CHUN CHEUNG

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-43 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 34-43 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/55/02)
Paper No(s)/Mail Date 09/04/2008 and 01/15/2009
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 09/04/2008 and 01/15/2009 are being considered by the examiner.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 34, 36-42 rejected under 35 U.S.C. 103(a) as being unpatentable over Singer (GB 2175884).

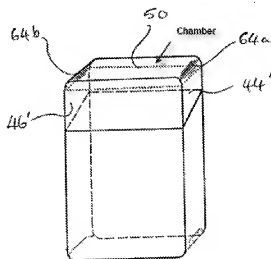


Fig. 5

As to claim 34, Singer discloses a hinged-lid box, for a cigarette block wrapped in an inner blank as pack contents (page 1, lines 9-10), comprising a longitudinally extending box part (Figure 5), lid and collar, the box part having a relatively wide box front wall

(10), a corresponding box rear wall (12), relatively narrow box side walls (14, 16) and a base wall (18), and the lid having a relatively wide lid front wall, a corresponding lid rear wall, relatively narrow lid side walls and an end wall (Figure 5), characterized by the following features: a) the lid is connected in a pivotable manner to the box part in a region of the lid rear wall, and to the box rear wall, by a transversely directed linear articulation (Figure 5), b) formed above or beneath the cigarette block is a free chamber (Figure above, if the width of the cigarette block is the width of the cigarette pack, the rounded portion will create a chamber) which is bounded in an outward direction in a region of the lid at least by the end wall, the lid front wall and the lid rear wall or in a region of the box part below the pack contents by the base wall, the box front wall and the box rear wall, and is bounded in an inner direction by the cigarette block, c) the chamber is arranged symmetrically in relation to a transverse, central vertical plane of the box (Figure 5), and d) the end wall or base wall has an arcuate configuration, running from one lid side wall to the other lid side wall or from one box side wall to the other box side wall. However, Singer does not disclose a collar attached to the cigarette box, and does not disclose the arcuate angle is predominantly arcuate configuration. Nevertheless, It would have been obvious to a person having ordinary skill in the art at the time of the invention to put a collar inside the cigarette pack box is well-known and also the predominantly arcuate angle is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

As to claim 36, Singer discloses lateral sub-regions of the end wall and the base wall are continuations of the lid side walls and the box side walls, and are extensions, namely end tabs (56, 58), of inner lid side tabs and the box side tabs (Figure 4).

As to claim 37, Singer discloses the end wall and the base wall are of at least double layered design in a central section, by virtue of a crosspiece (50) being arranged on the outside of the end wall or base wall, with end regions of the end tabs being fastened on an inner side of the crosspiece (Figure 4).

As to claim 38, Singer discloses the end wall and the base wall have rounded side section (Figure 5) and a planer, transversely directed central section (50), with the side sections being of at least partially elliptical design or being parts of ellipses, the side section adjoining the side walls with a relatively pronounced curvature and merging into a horizontal central section (50)

As to claim 39, Singer discloses both the lid front wall (40') and the lid rear wall (42'), and also the box front wall (40) and box rear wall (42), conform to the contour of the end wall and the base wall and are connected to one another in the central by the crosspiece (50).

As to claim 40, Singer discloses the end wall and base wall, in sub-regions outside the crosspiece, are supported on a free edge of the lid front wall and the lid rear wall or box front wall and box rear wall, by way of a broadening provided on the end tabs (see Figure below).

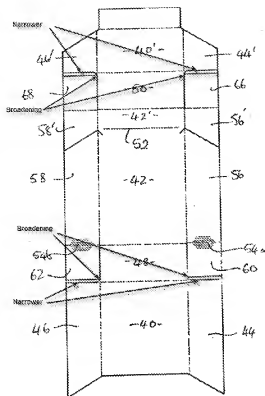


Fig. 4

As to claim 41, Singer discloses all the limitation in claim 34 above, but does not disclose the chamber is formed only in the region of the end wall, above the cigarette block, by a corresponding design of the end wall and of the base wall is designed in a planar manner in order for the cigarette block to butt against the inside of the base wall. However, the size of the chamber above the cigarette block and design to butt against the inside of the base wall are an obvious matter of design choice, for example, as to Figure 5 above, the cigarette block can be design below the blue line as drawn in above Figure, so the chamber is above the cigarette block.

As to claim 42, Singer discloses the sub- regions of the end wall and of the base wall, namely end tabs connected to the lid side walls or to the box side walls, butt against

free peripheral edges of the lid front wall and lid rear wall or against free peripheral edges of the box front wall and box rear wall in a region of a broadening of the end wall or base wall (Figure 4 above).

4. Claims 35 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Singer (GB 2175884) in view of Draghetti (5,833,060).

As to claim 35, Singer discloses a hinged-lid box, for a cigarette block wrapped in an inner blank as pack contents (page 1, lines 9-10), comprising a longitudinally extending box part (Figure 5), lid and collar, the box part having a relatively wide box front wall (10), a corresponding box rear wall (12), relatively narrow box side walls (14, 16) and a base wall (18), and the lid having a relatively wide lid front wall, a corresponding lid rear wall, relatively narrow lid side walls and an end wall (Figure 5), characterized by the following features: a) the lid is connected in a pivotable manner to the box part in a region of the lid rear wall, and to the box rear wall, by a transversely directed linear articulation (Figure 5), b) formed above or beneath the cigarette block is a free chamber (Figure above, if the width of the cigarette block is the width of the cigarette pack, the rounded portion will create a chamber) which is bounded in an outward direction in a region of the lid at least by the end wall, the lid front wall and the lid rear wall or in a region of the box part below the pack contents by the base wall, the box front wall and the box rear wall, and is bounded in an inner direction by the cigarette block, c) the chamber is arranged symmetrically in relation to a transverse, central vertical plane of the box (Figure 5), and d) the end wall or base wall has a arcuate angle running from one lid side wall to the other lid side wall. However, Singer does not disclose a collar

attached to the cigarette box, and does not disclose the end wall or base wall comprises a plurality of in each case planer section which are directed at an angle to one another, namely two obliquely directed side sections and a horizontally or transversely directed central section and the obliquely directed side section adjoin the side walls and the central section, at an obtuse angle in each case. However, Draghetti et al discloses collar (34) attached to a cigarette box and further discloses the end wall and base wall comprises a plurality of each case planer sections which are directed obliquely directed (17', 16', 10' and 11') section and a horizontal central section, and the central section at an obtuse angle in each case (Figures 2 and 3). It would have been obvious to a person having ordinary skill in the art at the time of the invention was made to modify the container of Singer with collar attached to the cigarette box and also the modify the arcuate portion of the side portion with obliquely directed section and a horizontal central section with obtuse angle relation as taught by Draghetti to perform the same function whether the side chamber with the oblique surface or arcuate angle surface. It has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

As to claim 43, Singer discloses a hinged-lid box, for a cigarette block wrapped in an inner blank as pack contents (page 1, lines 9-10), comprising a longitudinally extending box part (Figure 5), lid and collar, the box part having a relatively wide box front wall (10), a corresponding box rear wall (12), relatively narrow box side walls (14, 16) and a base wall (18), and the lid having a relatively wide lid front wall, a corresponding lid rear wall, relatively narrow lid side walls and an end wall (Figure 5), characterized by the

following features: a) the lid is connected in a pivotable manner to the box part in a region of the lid rear wall, and to the box rear wall, by a transversely directed linear articulation (Figure 5), b) formed above the cigarette block is a free chamber (Figure 5 above, if the width of the cigarette block is the width of the cigarette pack, the rounded portion will create a chamber) which is bounded in an outward direction by the end wall, and with the shape of a round edge and extends across the full width of the box, by the lid front wall and by the lid rear wall, c) lid side walls (56', 58') and the box side walls (58, 56) have extension, namely end tabs of inner lid side tabs (66, 68) and the box side tabs 60, 62). However, Singer does not disclose a collar attached to the cigarette box, and does not disclose the end wall which is obliquely directed and roof-shaped and lid side walls and the box side walls have extensions, namely end tabs of inner lid side tabs and box side tabs and the end tabs are extended beyond the cigarette block in the planes of the lid side wall and the box side wall and are folded over into an obliquely directed plan of the end wall, at the distance above the cigarette block, to form a peripheral edge and butt against said end wall on the inside. However, Draghetti et al discloses collar (34) attached to a cigarette box and further discloses the end wall and base wall comprises a plurality of each case planer sections which are directed obliquely directed (17', 16', 10' and 11') section and a roof-shaped which extends across the full width of the box, by the lid front wall and by the lid rear wall (Figures 2 and 3). It would have been obvious to a person having ordinary skill in the art at the time of the invention was made to modify the container of Singer with collar attached to the cigarette box and also the modify the end tabs of the inner side tabs and the box

side tabs and the end portion of the side portion with obliquely directed section and roof-shaped and which extends across the full width of the box, by the lid front wall and lid rear wall as taught by Draghetti to perform the same function whether the side chamber with the oblique surface or arcuate angle surface. It has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. The size of the chamber above the cigarette block and design to butt against the inside of the base wall are an obvious matter of design choice, for example, as to Figure 5 above, the cigarette block can be design below the blue line as drawn in above Figure, so the chamber is above or below the cigarette block.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHUN CHEUNG whose telephone number is (571)270-5702. The examiner can normally be reached on Monday to Friday: 8:30AM~ 6:00AM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHUN CHEUNG/
Examiner, Art Unit 3728

/Mickey Yu/
Supervisory Patent Examiner, Art
Unit 3728